

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JAN 10 2005

In the Matter of)
)
Amendment of Section 73.202(b),)
FM Table of Allotments)
For FM Broadcast Stations.)
)
(Lancaster and Pickerington, Ohio))

Federal Communications Commission
Office of Secretary
MB Docket No. 03-238
RM-10820

DOCKET FILE COPY ORIGINAL

To: Secretary, to forward to:
Assistant Chief (Allocations), Audio Division

SUBMISSION IN RESPONSE TO
STATEMENT FOR THE RECORD AND REPLY TO FURTHER COMMENTS

North American Broadcasting Co., Inc. ("North American"), the licensee of WTDA(FM) (formerly WEGE(FM)), Westerville, Ohio (Facility ID No. 60099), by its attorneys, hereby submits in the above-captioned docket a copy of its "Response to Supplement to Motion to Dismiss," dated January 7, 2005 (the "Response") filed in FCC File BPH-20040198ALM (see Attachment I). The Response addresses the "Supplement to Motion to Dismiss," dated November 16, 2004 (the "Supplement"), filed by Radio Stations WPAY/WPFB, Inc. ("WPAY Inc.") in File No. BPH-20040198ALM. Insofar as Franklin Communications, Inc., in its "Statement for the Record and Reply to Further Comments" dated November 18, 2004, filed and relies on the Supplement in this docket, North American respectfully submits that its Response to the Supplement should also be made a part of the record in this docket. 1/

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1/ To the extent that leave to file this submission is required, North American respectfully requests such leave so that the record in this proceeding may be complete.

Respectfully submitted,

**NORTH AMERICAN BROADCASTING,
CO., INC.**

By: 
Marissa G. Repp

HOGAN & HARTSON L.L.P.
555 Thirteenth Street, NW
Washington, DC 20004-1109
(202) 637-6845

Its Attorneys

January 10, 2005

ATTACHMENT I

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of)

NORTH AMERICAN BROADCASTING)
CO., INC.)

File No. BPH-20040198ALM

For Construction Permit for)
Minor Change in Licensed Facility)
Station WTDA(FM) (formerly WEGE(FM)),)
Westerville, Ohio)
Facility ID No. 60099)

RECEIVED

JAN - 7 2005

Federal Communications Commission
Office of Secretary

TO: THE SECRETARY, to forward to Chief, Media Bureau

RESPONSE TO SUPPLEMENT TO MOTION TO DISMISS

North American Broadcasting Co., Inc. ("North American"), the licensee of WTDA(FM) (formerly WEGE(FM)), Westerville, Ohio (Facility ID No. 60099), hereby responds to the "Supplement to Motion to Dismiss," dated November 16, 2004 (the "Supplement"), filed by Radio Stations WPAY/WPFB, Inc. ("WPAY Inc."), the licensee of WPAY-FM, Portsmouth, Ohio (Facility ID No. 54813), regarding the captioned application (the "North American Application"). 1/

The background of this matter is set forth in North American's Opposition to Motion to Dismiss. Since then, on November 16, 2004, WPAY Inc. filed an application for modification of its Class C construction permit. *See* FCC File No. BMPH-20041116ACO (the "WPAY Modification Application"). As stated by WPAY Inc. in its Supplement, the

1/ A Motion to Dismiss was filed by WPAY Inc. on January 23, 2004; North American opposed the Motion to Dismiss on February 5, 2004 ("Opposition to Motion to Dismiss").

WPAY Modification Application proposes construction of Class C facilities for WPAY-FM at its licensed transmitter site. 2/ WPAY Inc. further states in its Supplement: "The FAA has issued a Determination of No Hazard for the proposed tower. The tower has been registered and its registration number is 1246113." 3/ WPAY Inc. asserts in its Supplement that the North American Application should not be accepted because it conflicts with the modification of WPAY Inc.'s Class C permit as proposed in the WPAY Modification Application. 4/

Surprised that the Federal Aviation Administration ("FAA") would issue a determination of no hazard for a site already the subject of a Determination of Presumed Hazard, 5/ a Freedom of Information Act ("FOIA") request was submitted to the Southern Region, Air Traffic Division, FAA relating to FAA Aeronautical Study No. 2004-ASO-4172-OE -- the FAA study number listed by WPAY Inc. in connection with Antenna Structure Registration ("ASR") 1246113. 6/

Among the items received in response to the FOIA request is a Determination of Presumed Hazard dated December 27, 2004, issued pursuant to FAA Aeronautical Study No. 2004-ASO-4172-OE (*see* Attachment C). Such Determination states that initial findings of the FAA indicated that the structure "would exceed obstruction standards and/or would have an adverse physical or electromagnetic interference effect upon navigable airspace or air navigation

2/ See Supplement at ¶ 3.

3/ *Id.* at ¶ 8.

4/ *Id.*

5/ See FAA Aeronautical Study No. 2002-ASO-5924-OE (Dec. 12, 2002) (copy at Attachment A).

6/ A reference copy of ASR No. 1246113, and the FCC Form 854 for such registration, is at Attachment B.

facilities.” Among the adverse effects on visual flight rules (“VFR”) noted on page 2 of the Determination is that the proposed structure would have a height greater than 500 feet above ground level; specifically, that the proposed structure would exceed that limit by 665 feet. 7/

While WPAY Inc. asserts that its plans to construct full Class C facilities are being impeded by the North American Application, WPAY Inc. has been issued a construction permit to operate full Class C facilities, FCC File No. BPH-20021023ABC, at a site that is fully-spaced to the North American Application. What instead appears to be impeding WPAY Inc. is its lack of desire to build such facilities and its unrealistic, twice-dashed hopes of building at its licensed site.

Although WPAY Inc. states that it “recognizes that it has three years to complete its Class C facilities and plans to diligently pursue its construction,” 8/ it incongruously requests tolling of this three-year period while the “blocking” North American application is pending. As noted, nothing, other than its own reticence, appears to be impeding or blocking WPAY Inc. from fulfilling the terms of its issued Class C construction permit. To toll the three-year construction period would undermine the Commission’s goal to keep triggered Class C station’s feet to the fire to build out the Class C spectrum they have applied for, rather than accepting a downgrade to Class C0.

Clearly, given the record at the FAA, what needs to be dismissed or withdrawn here is the WPAY Modification Application, not the North American Application.

7/ As to any interim determination of no hazard, records from the FAA Southern District indicate that the “proposal was issued a DNH based on no objections....Final review prior to distribution revealed that this proposal would be within 2 miles of the Ohio River (VFR flyway), therefore the DNH was terminated . . .” See Attachment D (Case Notes ASN: 2004-ASO-4172-OE). The October 4, 2004 determination was marked as “NOT SENT,” see Attachment E.

8/ Supplement at ¶ 9.

Respectfully submitted,

**NORTH AMERICAN BROADCASTING,
CO., INC.**

By: 
Marissa G. Repp

HOGAN & HARTSON L.L.P.
555 Thirteenth Street, NW
Washington, DC 20004-1109
(202) 637-6845

Its Attorneys

January 7, 2005

ATTACHMENT A



Federal Aviation Administration
Southern Regional Office
1701 Columbia Avenue-ASO-520
College Park, GA 30337

AERONAUTICAL STUDY NO.
2002-ASO-5924-OE
PRIOR STUDY NO.

Issued Date: 12/12/2002

MARK EVAR
WPAY WPFB INC
4505 CENTRAL AVE
MIDDLETOWN, OH 45044

**** DETERMINATION OF PRESUMED HAZARD ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure Type: Antenna Tower
Location: PORTSMOUTH, KY
Latitude: 38-43-21 NAD83
Longitude: 83-0-5
Heights: 1143 feet above ground level (AGL)
2243 feet above mean sea level (AMSL)

The initial findings of this study indicated that the structure as described above would exceed obstruction standards and/or would have an adverse physical or electromagnetic interference effect upon navigable airspace or air navigation facilities. Therefore, pending resolution of the issues described below, it is hereby determined that the structure is presumed to be a hazard to air navigation.

Any height exceeding 900 feet above ground level (2000 feet above mean sea level), will result in a substantial adverse effect and would warrant a Determination of Hazard to Air Navigation.

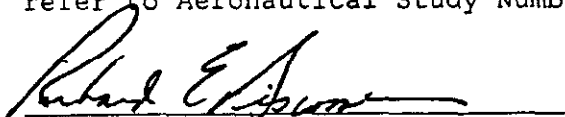
See attachment for additional information.

A copy of this determination will be forwarded to the Federal Communications Commission if the structure is subject to their licensing authority.

NOTE: PENDING RESOLUTION OF THE ISSUES DESCRIBED ABOVE, THE STRUCTURE IS PRESUMED TO BE A HAZARD TO AIR NAVIGATION. THIS DETERMINATION DOES NOT AUTHORIZE CONSTRUCTION OF THE STRUCTURE EVEN AT A REDUCED HEIGHT. ANY RESOLUTION OF THE ISSUES DESCRIBED ABOVE MUST BE COMMUNICATED TO THE FAA SO THAT A FAVORABLE DETERMINATION CAN SUBSEQUENTLY BE ISSUED.

IF MORE THAN 60 DAYS FROM THE DATE OF THIS LETTER HAS ELAPSED WITHOUT ATTEMPTED RESOLUTION, IT WILL BE NECESSARY FOR YOU TO REACTIVATE THE STUDY BY FILING A NEW FAA FORM 7460-1, NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION.

If we can be of further assistance, please contact our office at (404)305-5579. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2002-ASO-5924-OE.

A handwritten signature in dark ink, appearing to read "Earl P. Newalu Jr.", is written over a horizontal line.

Earl P. Newalu Jr.
Specialist

(DPH)

Attachment(s)

Attachment

AERONAUTICAL STUDY: 02-ASO-5924-OE

Aeronautical study for Instrument Flight Rules (IFR) effect disclosed that the proposed height increase would necessitate the following revisions at the Ashland-Boyd County (DWU) Airport.

Increase the missed approach holding altitude for Simplified Directional Finding (SDF) Runway 10 instrument approach from 3000 feet AMSL to 3300 feet AMSL.

Increase the initial approach fix holding and missed approach holding altitude for the Global Positioning System and Very High Frequency Omni-directional Range (GPS/VOR) Runway 10 instrument approach from 3000 feet AMSL to 3300 feet AMSL.

The proposed height increase to the existing structure would require modification to the missed approach procedure, which would derogate the airport's capacity/efficiency. Alternatives include reducing the height of the structure to 900 feet AGL/2000 feet AMSL or relocating the structure to a new location. Any new site will require a separate study.

//////////////////////////////////END OF COMMENTS//////////////////////////////////

ATTACHMENT B

REFERENCE COPY

This is not an official FCC authorization. It is a record of public information contained in the FCC's Antenna Structure Registration database on the date that this reference copy was generated. In cases where FCC rules require the presentation, posting, or display of an FCC authorization, this document may not be used in place of an official FCC authorization.

United States of America
Federal Communications Commission

Antenna Structure Registration

Owner: Radio Stations WPAY/WPFB, Inc.
 FCC Registration Number (FRN): 0003780582

Radio Stations WPAY/WPFB, Inc. 1009 Gallia Street Portsmouth, OH 45662	Registration Number: 1246113
	Issue Date: 11/16/2004
Location of Antenna Structure: 0.5 MI SW OF PORTSMOUTH, OH Southshore, KY	Ground Elevation (AMSL): 335.0 meters
	Overall Height Above Ground (AGL): 352.0 meters
Latitude: 38-43-21.0 N Longitude: 083-00-05.0 W NAD83	Overall Height Above Mean Sea Level (AMSL): 687.0 meters
Painting and Lighting Requirements: FAA Chapters 4, 9, 12 Paint and Light in Accordance with FAA Circular Number 70/7460-1K	
Special Conditions:	

This registration is effective upon completion of the described antenna structure and notification to the Commission. YOU MUST NOTIFY THE COMMISSION WITHIN 24 HOURS OF COMPLETION OF CONSTRUCTION OR CANCELLATION OF YOUR PROJECT. Use FCC Form 854. To file electronically, connect to the Antenna Structure Registration system by pointing your web browser to <http://wireless.fcc.gov/antenna/>. Electronic filing is recommended. You may also file manually by submitting a paper copy of FCC Form 854. Use purpose code "NT" for notification of completion of construction; use purpose code "CA" to cancel your registration.

The Antenna Structure Registration is not an authorization to construct radio facilities or transmit radio signals. It is necessary that all radio equipment on this structure be covered by a valid FCC license or construction permit.

You must immediately provide a copy of this Registration to all tenant licensees and permittees sited on the structure described on this Registration (although not required, you may want to use Certified Mail to obtain proof of receipt), and display your Registration Number at the site.

You must comply with all applicable FCC obstruction marking and lighting requirements, as set forth in Part 17 of the Commission's Rules (47 C.F.R. Part 17). These rules include, but are not limited to:

- **Posting the Registration Number:** The Antenna Structure Registration Number must be displayed in a conspicuous place so that it is readily visible near the base of the antenna structure. Materials used to display the Registration Number must be weather-resistant and of sufficient size to be easily seen at the base of the antenna structure. Exceptions exist for certain historic structures. See 47 C.F.R. 17.4(g)(h).

- **Inspecting lights and equipment:** The obstruction lighting must be observed at least every 24 hours in order to detect any outages or malfunctions. Lighting equipment, indicators, and associated devices must be inspected at least once every three months.
- **Reporting outages and malfunctions:** When any top steady-burning light or a flashing light (in any position) burns out or malfunctions, the outage must be reported to the nearest FAA Flight Service Station, unless corrected within 30 minutes. The FAA must again be notified when the light is restored. The owner must also maintain a log of these outages and malfunctions.
- **Maintaining assigned painting:** The antenna must be repainted as often as necessary to maintain good visibility.
- **Complying with environmental rules:** If you certified that grant of this registration would not have a significant environmental impact, you must nevertheless maintain all pertinent records and be ready to provide documentation supporting this certification and compliance with the rules, in the event that such information is requested by the Commission pursuant to 47 C.F.R. 1.1307(d).
- **Updating information:** The owner must notify the FCC of proposed modifications to this structure; of any change in ownership; or, within 30 days of dismantlement of the structure.

Copies of the Code of Federal Regulations (which contain the FCC's antenna structure registration rules, 47 C.F.R. Part 17) are available from the Government Printing Office (GPO). To purchase CFR volumes, call (202) 512-1800. For GPO Customer Service, call (202) 512-1803. For additional FCC information, consult the Antenna Homepage on the Internet at <http://wireless.fcc.gov/antenna/> or call the FCC's National Call Center at 1-888-CALLFCC (1-888-225-5322).

We have estimated the third party burden requirement associated with this collection to be 1 hour. This requirement has been identified under OMB control number of 3060-0139.

CLOSE WINDOW

REFERENCE COPY

This copy is intended to be used as a reference copy only and MAY NOT be submitted to the FCC as an application for manual filing.

FCC 854 Main Form**FCC Application for Antenna Structure Registration**

Approved by OMB

3060 - 0139

Est. Public Burden per Response: 30 minutes

File Number: **A0412866**

Purpose of Filing

1. Purpose of this filing: New
2A. For purpose codes of WD or AM, provide the file number of the pending application currently on file with the FCC:
2B. For purpose codes of MD, CA, AU, DI, NT, DU or OC provide FCC Registration Number:
2C. If purpose code is MD or NT, provide date constructed or Last altered (mm/dd/yy):
2D. If purpose code is DI, give date of dismantlement (mm/dd/yy):

Antenna Structure Ownership Information

3A. FCC ID of Owner/Assignee: L00132054	3B. Sub-Group Identification Number (SGIN) of Owner/Assignee: 000		3C. FCC Registration Number (FRN) of Owner/Assignee: 0003780582
4A. FCC ID of Assignor (for purpose code OC only):	4B. Sub-Group Identification Number (SGIN) of Assignor:		4C. FCC Registration Number (FRN) of Assignor:
5. Legal Owner of Structure/Assignee First Name (if individual):	MI:	Last Name:	Suffix:
6. Business Name (if other than Individual): Radio Stations WPAY/WPFB, Inc.			
7. Attention To:			
8. P.O. Box	And/Or	9. Street Address: 1009 Gallia Street	
10. City: Portsmouth	11. State: OH	12. Zip Code: 45662	
13. Telephone Number: (513)422-3625	14. E-Mail Address:		

Contact Representative Information

(If different from the Owner/Assignee)

15. First Name: Dennis	MI: F	Last Name: Begley	Suffix:
16. Business Name: Reddy Begley & McCormick, LLP			
17. P.O. Box:	And/Or	18. Street Address: 1156 15th Street NW, Suite 610	
19. City: Washington	20. State: DC	21. Zip: 20005-1770	
22. Telephone Number: (202)659-5700	23. E-Mail Address: dbegley@rbmfccclaw.com		

Antenna Structure

24. NAD83 Antenna Structure Latitude (DD-MM-SS.S): 38-43-21.0 N (N) <u>N</u> or <u>S</u>	25. NAD83 Antenna Structure Longitude (DDD-MM-SS.S): 083-00-05.0 W (W) <u>W</u> or <u>E</u>
--	---

26. Address or Geographical Location: 0.5 MI SW OF PORTSMOUTH, OH	
27. City: Southshore	28. State: KY
29. Elevation of site above mean sea level (refer to "a" in antenna structure examples): 335.0 meters	
30. Overall (highest) height above ground (AGL) of an antenna structure INCLUDING all appurtenances (antennas, dishes, lightning rods, obstruction lighting, etc.) (refer to "c" in antenna structure examples): 352.0 meters	
31. Overall height above mean sea level (sum total of items 29 and 30): 687.0 meters	
32. Overall height above ground level (AGL) of the supporting structure itself WITHOUT appurtenances (refer to "b" in antenna structure examples): 351.0 meters	
33. Indicate the code for the type of structure on which antenna will be mounted (i.e., pole, building, water tank, silo, tower, etc.) (See Instructions): TOWER - Free standing or Guyed Structure used for Communications Purposes	
34-35. If type of structure is an Array, provide coordinates for center of the array below:	
34. NAD83 Array Center Latitude (DD-MM-SS.S): (N) or S S	35. NAD83 Array Center Longitude (DDD-MM-SS.S): (W) or E S

FAA Notification

36. FAA Study Number: 2004-ASO-4172-OE	37. Date Issued (mm/dd/yy): 10/04/2004
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Environmental Assessment

38. (No)	Yes No	Would a Commission grant of Authorization for this location be an action which may have significant environmental effect? See Section 1.1307 of 47 CFR. If 'YES', submit an environmental assessment as required by 47 CFR, Sections 1.1308 and 1.1311.
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Certification Statements

1. The applicant certifies that all statements made in this application and in the exhibits, attachments, or documents incorporated by reference are material, are part of this application, and are true, complete, correct, and made in good faith.
2. The applicant certifies that neither the applicant nor any other party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. ? 862, because of a conviction for possession or distribution of a controlled substance. See Section 1.2002(b) of the rules, 47 CFR ? 1.2002(b), for the definition of 'party to the application' as used in this certification.

Signature**39. Typed or Printed Name of Party Authorized to Sign**

First Name: Dennis	MI: F	Last Name: Begley	Suffix:
40. Title: Counsel			
41. Signature: Begley , Dennis F		42. Date (mmddyy): 11/16/2004	
WILLFUL FALSE STATEMENTS MADE ON THIS FORM OR ANY ATTACHMENTS ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. Code, Title 18, Section 1001) AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. Code, Title 47, ? 312(a)(1)), AND/OR FORFEITURE (U.S. Code, Title 47, ? 503).			



ATTACHMENT C



Federal Aviation Administration
Southern Regional Office
1701 Columbia Avenue-ASO-520
College Park, GA 30337

Aeronautical Study No.
2004-ASO-4172-OE
Prior Study No.
2002-ASO-5924-OE

Issued Date: 12/27/2004

MARK EVAR
WPAY FM
1009 GALLIA STREET
PORTSMOUTH, OH 45662

**** DETERMINATION OF PRESUMED HAZARD ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure Type: Antenna Tower
Location: SOUTHSORE, KY
Latitude: 38-43-21 NAD 83
Longitude: 83-0-5
Heights: 1155 feet above ground level (AGL)
2254 feet above mean sea level (AMSL)

The initial findings of this study indicated that the structure as described above would exceed obstruction standards and/or would have an adverse physical or electromagnetic interference effect upon navigable airspace or air navigation facilities. Therefore, pending resolution of the issues described below, it is hereby determined that the structure is presumed to be a hazard to air navigation.

See attachment for additional information.

A copy of this determination will be forwarded to the Federal Communications Commission if the structure is subject to their licensing authority.

NOTE: PENDING RESOLUTION OF THE ISSUES DESCRIBED ABOVE, THE STRUCTURE IS PRESUMED TO BE A HAZARD TO AIR NAVIGATION. THIS DETERMINATION DOES NOT AUTHORIZE CONSTRUCTION OF THE STRUCTURE EVEN AT A REDUCED HEIGHT. ANY RESOLUTION OF THE ISSUES DESCRIBED ABOVE MUST BE COMMUNICATED TO THE FAA SO THAT A FAVORABLE DETERMINATION CAN SUBSEQUENTLY BE ISSUED.

IF MORE THAN 60 DAYS FROM THE DATE OF THIS LETTER HAS ELAPSED WITHOUT ATTEMPTED RESOLUTION, IT WILL BE NECESSARY FOR YOU TO REACTIVATE THE STUDY BY FILING A NEW FAA FORM 7460-1, NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION.

If we can be of further assistance, please contact our office at (404)305-5589. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2004-ASO-4172-OE.

Signature Control No: 390153-335230

(DPH)

Cesar I Perez
Specialist

Attachment(s)
Additional Information

Based on further study the proposal was found to have a substantial adverse effect on the aeronautical operations in the vicinity of this proposal.

VFR Effect:

The structure, as proposed, will exceed the standard for determining obstructions to air navigation contained in Part 77, Subpart C, of the Federal Aviation Regulations as follows:

- Exceeds FAR Part 77.23 (a)(1) by 665 feet, a height exceeding 500 feet above ground level at its site.

Study for visual flight rules (VFR) effect disclosed that the structure is located within 2 statute miles of the Ohio River, which is a regularly used VFR flyway, and would have a height greater than 500 feet above the surface at its site.

Pilots using pilotage navigation during periods of low ceilings and/or visibility normally remain within 1 mile of identifiable landmarks, such as the Ohio River, to maintain visual reference to the VFR flyway.

IFR Effects:

Aeronautical study for instrument flight rules (IFR) effect disclosed that the proposal would necessitate the following revisions as related to the Ashland-Boyd County Airport (DWU):

- Increase the missed approach holding altitude for the Simplified Directional Finding (SDF) Runway 10 instrument approach from 3000 feet AMSL to 3300 feet AMSL.

- Increase the initial approach fix holding and missed approach holding altitude for the Global Positioning System or Very High Frequency Omni-directional Range (GPS/VOR) Runway 10 instrument approach from 3100 feet AMSL to 3300 feet AMSL.

The proposed height increase to the existing structure would require modification to the missed approach procedure, which would derogate the airport's capacity/efficiency.

Military Effect:

The proposed height increase to the existing structure would require an increase to the Emergency Safe Altitude in the vicinity of the structure.

Electromagnetic Effect:

For your information and planning, while not identified as a hazard, a potential for electromagnetic interference (EMI) to FAA communications and navigation facilities was identified during the course of our internal study.

Alternatives include maintaining the height of the existing structure including all appurtenances, to no higher than 663 feet AGL/1763 feet AMSL (height published in the NACO database under number 18-0502) to receive a favorable determination. Another alternative would be to relocate the existing structure to a new location. Any new site will require a separate study.

//////////////////END OF COMMENTS//////////////////

ATTACHMENT D

ASN: 2004-ASO-4172-OE**Sponsor: WPAY FM****Cesar I. Perez, 12/9/2004 3:27:59 PM**

This proposal was issued a DNH based on no objections in response to a circ started prior to my taking this case over. Final review prior to distribution revealed that this proposal would be within 2 miles of the Ohio River (VFR flyway), therefore the DNH was terminated and FS and FPO unlocked. A subsequent DPH will likely be issued. The original DNH was never distributed.

Sandy Brodnax, 7/23/2004 8:44:39 AM

Proposed hgt inc from 1763 AMSL. 02-5924 study DPH.

Sandy Brodnax, 7/23/2004 8:38:27 AM

Proposed hgt inc from 2243 AMSL

Total number of notes found: 3

A rectangular button with the word "Print" in a bold, sans-serif font.A rectangular button with the word "Close" in a bold, sans-serif font.

ATTACHMENT E



Federal Aviation Administration
Southern Regional Office
1701 Columbia Avenue-ASO-520
College Park, GA 30337

Aeronautical Study No.
2004-ASO-4172-OE
Prior Study No.
2002-ASO-5924-OE

Issued Date: 10/4/2004

MARK EVAR
WPAY FM
1009 GALLIA STREET
PORTSMOUTH, OH 45662

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has completed an aeronautical study under the provisions of 49 U.S.C., Section 44718 and, if applicable, Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure Type: Antenna Tower
Location: SOUTHSORE, KY
Latitude: 38-43-21 NAD 83
Longitude: 83-0-5
Heights: 1155 feet above ground level (ASL)
2254 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities. Therefore, pursuant to the authority delegated to me, it is hereby determined that the structure would not be a hazard to air navigation provided the following condition(s) is(are) met:

As a condition to this Determination, the structure should be marked and/or lighted in accordance with FAA Advisory Circular 70/7460-1 AC 70/7460-1K Change 1, Obstruction Marking and Lighting, a high-dual system - Chapters 4, 9 (H-Dual), & 12.

It is required that the enclosed FAA Form 7460-2, Notice of Actual Construction or Alteration, be completed and returned to this office any time the project is abandoned or:

☐ At least 10 days prior to start of construction
(7460-2, Part I)

☒ Within 5 days after the construction reaches its greatest height
(7460-2, Part II)

As a result of this structure being critical to flight safety, it is required that the FAA be kept apprised as to the status of the project. Failure to respond to periodic FAA inquiries could invalidate this determination.

See attachment for additional condition(s) or information.

This determination expires on 4/4/2006 unless:

- (a) extended, revised or terminated by the issuing office.
- (b) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on

the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE POSTMARKED OR DELIVERED TO THIS OFFICE AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE.

This determination is subject to review if an interested party files a petition on or before 11/3/2004. In the event a petition for review is filed, it must contain a full statement of the basis upon which it is made and be submitted in triplicate to the Manager, Airspace and Rules Branch - ATO-R, Federal Aviation Administration, 800 Independence Ave. Rm. 423, Washington, D.C. 20591.

This determination becomes final on 11/13/2004 unless a petition is timely filed. In which case, this determination will not become final pending disposition of the petition. Interested parties will be notified of the grant of any review.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

This aeronautical study considered and analyzed the impact on existing and proposed arrival, departure, and en route procedures for aircraft operating under both visual flight rules and instrument flight rules; the impact on all existing and planned public-use airports, military airports and aeronautical facilities; and the cumulative impact resulting from the studied structure when combined with the impact of other existing or proposed structures. The study disclosed that the described structure would have no substantial adverse effect on air navigation.

An account of the study findings, aeronautical objections received by the FAA during the study (if any), and the basis for the FAA's decision in this matter can be found on the following page(s).

A copy of this determination will be forwarded to the Federal Communications Commission if the structure is subject to their licensing authority.

If we can be of further assistance, please contact our office at (404)305-5589. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2004-ASO-4172-OE.

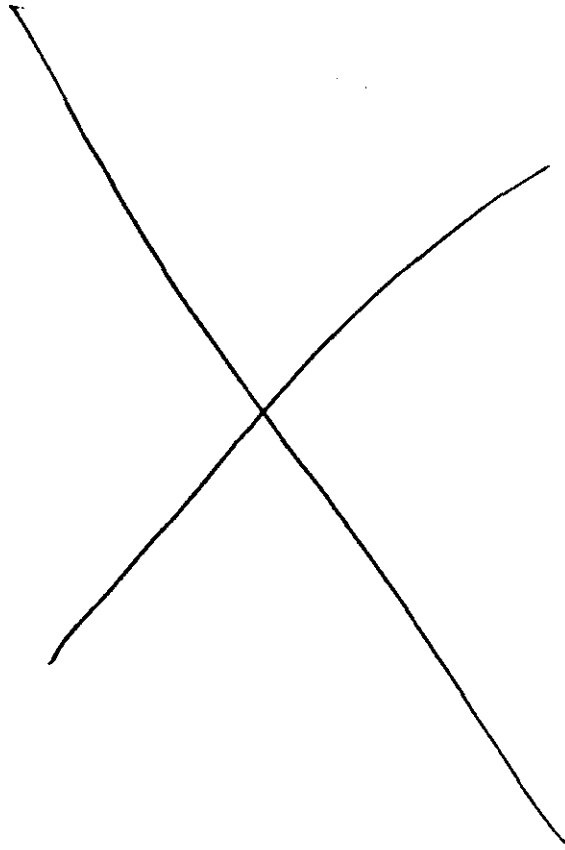
Signature Control No: 390153-314746

(DNH)

Cesar I Perez
Specialist

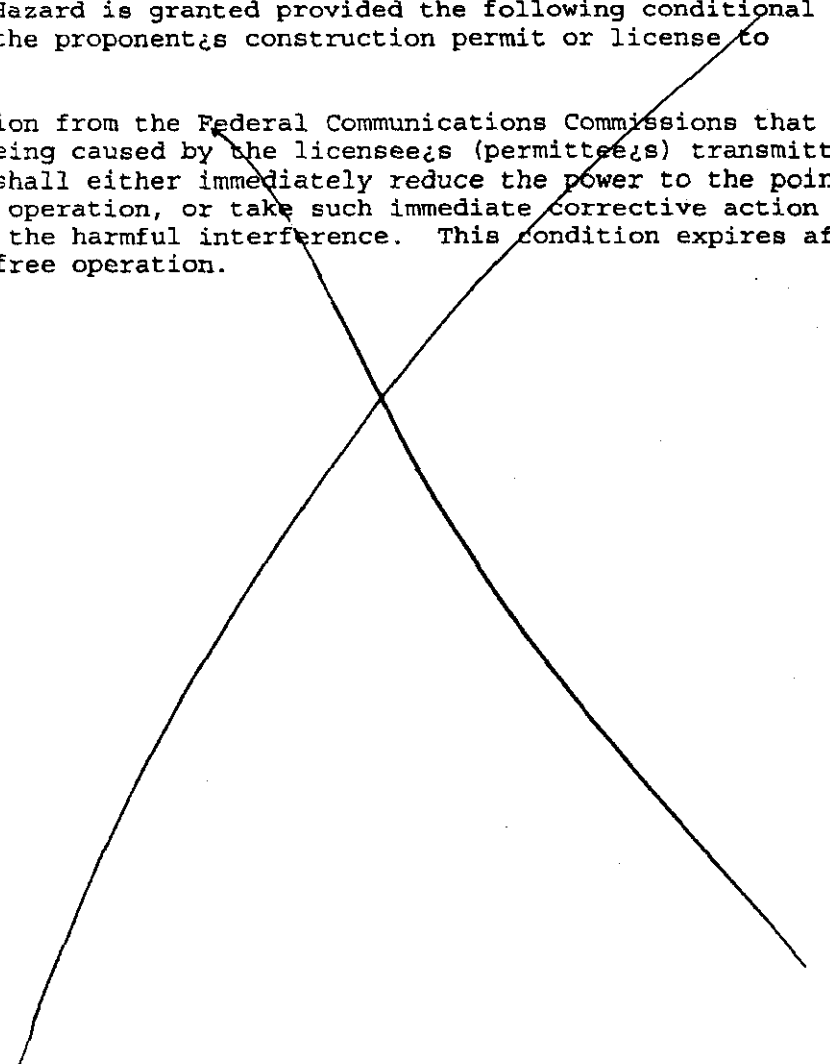
Attachment(s)
Additional Information
Frequency Data

7460-2 Attached



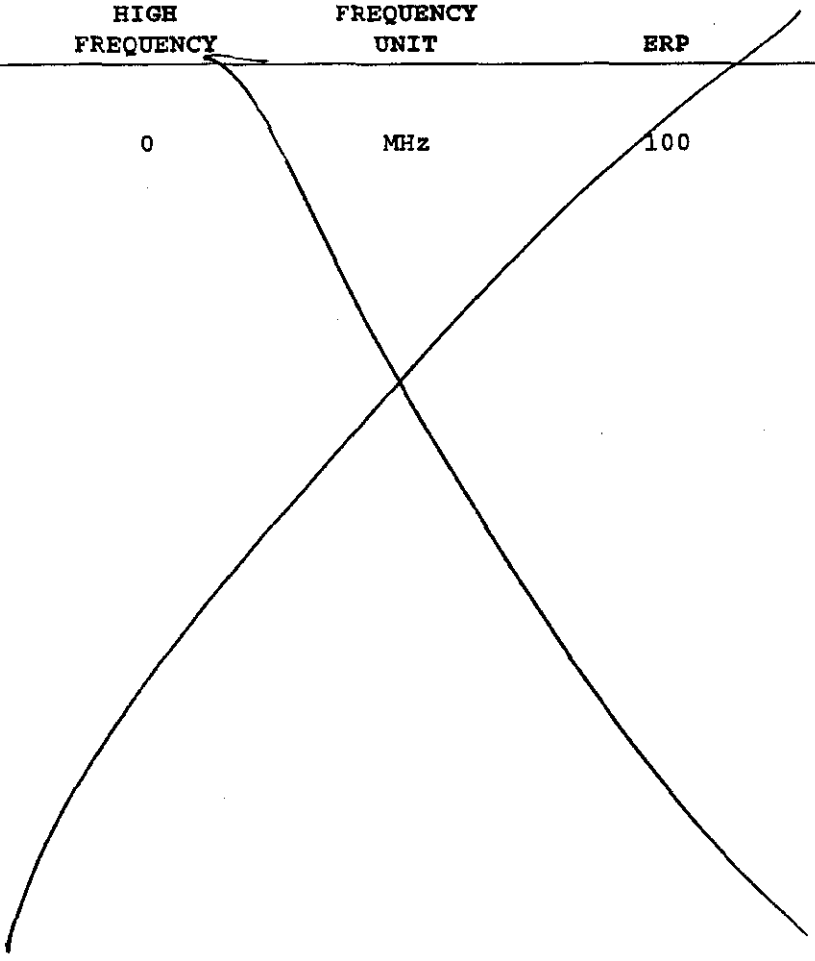
This determination of No Hazard is granted provided the following conditional statement is included in the proponent's construction permit or license to radiate:

Upon receipt of notification from the Federal Communications Commissions that harmful interference is being caused by the licensee's (permittee's) transmitter, the licensee (permittee) shall either immediately reduce the power to the point of no interference, cease operation, or take such immediate corrective action as is necessary to eliminate the harmful interference. This condition expires after one year of interference-free operation.



Frequency Data for ASN 2004-ASO-417 DE

LOW FREQUENCY	HIGH FREQUENCY	FREQUENCY UNIT	ERP	ERP UNIT
104.1	0	MHz	100	KW



CERTIFICATE OF SERVICE

I, Regina Hogan, do hereby certify that a copy of the foregoing **Response to Supplement to Motion to Dismiss** is being sent via first-class, U.S. Mail, postage prepaid, this 7th day of January, 2005, to the following:

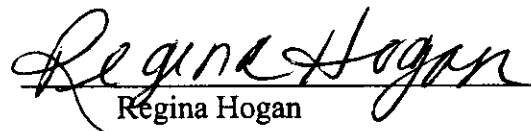
Peter H. Doyle, Chief*
Audio Division
Media Bureau
Federal Communications Commission
445 – 12th Street, S.W.
Room 2A-320
Washington, DC 20554

James D. Bradshaw, Deputy Chief*
Audio Division
Media Bureau
Federal Communications Commission
445 – 12th Street, S.W.
Room 2-A262
Washington, DC 20554

Dennis F. Begley, Esq.
Reddy, Begley & McCormick, LLP
1156 15th Street, NW
Suite 610
Washington, D.C. 20005-1770
Attorneys for Radio Stations WPAY/WPFB, Inc.

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW, Suite 301
Washington, DC 20016
Attorneys for Franklin Communications, Inc.

* By Hand


Regina Hogan

CERTIFICATE OF SERVICE

I, Regina Hogan, do hereby certify that a copy of the foregoing **Submission in Response to Statement for the Record and Reply to Further Comments** is being sent via first-class, U.S. Mail, postage prepaid, this 10th day of January, 2005, to the following:

Peter H. Doyle, Chief*
Audio Division
Media Bureau
Federal Communications Commission
445 – 12th Street, S.W.
Room 2A-320
Washington, DC 20554

James D. Bradshaw, Deputy Chief*
Audio Division
Media Bureau
Federal Communications Commission
445 – 12th Street, S.W.
Room 2-A262
Washington, DC 20554

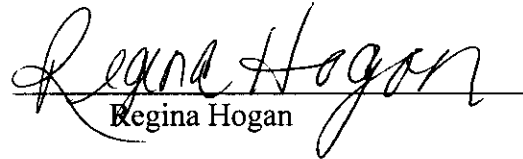
John A. Karousos, Assistant Chief*
Audio Division
Media Bureau
Federal Communications Commission
445 – 12th Street, S.W.
Room 3-A266
Washington, D.C. 20554

Victoria McCauley*
Audio Division
Media Bureau
Federal Communications Commission
445 – 12th Street, S.W.
Room 2-A232
Washington, D.C. 20554

Dennis F. Begley, Esq.
Reddy, Begley & McCormick, LLP
1156 15th Street, NW
Suite 610
Washington, D.C. 20005-1770
Attorneys for Radio Stations WPAY/WPFB, Inc.

Gary S. Smithwick, Esq.
Smithwick & Belendiuk, P.C.
5028 Wisconsin Avenue, NW, Suite 301
Washington, DC 20016
Attorneys for Franklin Communications, Inc.

* By Hand


Regina Hogan